

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**DARNELL TYLER,**

**Defendant.**

**CASE NO. 8:06CR382**

**MEMORANDUM  
AND ORDER**

This matter is before the Court on a Report and Recommendation (Filing No. 39) of a Magistrate Judge recommending that I accept the Defendant's plea of guilty. There are no objections to the Report and Recommendation. Pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 11.2(d), the Court has conducted a de novo review of the record.

The Defendant was charged in a 3-count Superseding Indictment with: traveling in interstate commerce with the intent to distribute proceeds of illegal drug activity (Count I); illegal reentry (Count II); and forfeiture of \$100,950.00 relating to Count I (Count III). The Defendant seeks to plead guilty to Counts II and III.

The federal forfeiture rule requires, in this case, a plea of guilty to Count I. Fed. R. Crim. P. 32.2(b)(1) (requiring a plea "on any count in an indictment or information regarding which criminal forfeiture is sought"). In fact, the language of the Superseding Indictment requires a conviction of Count I. Because the Defendant has not pleaded guilty to the underlying Count I, the plea to Count III cannot be accepted. This matter will be removed from the sentencing schedule and returned to the trial calendar.

**IT IS ORDERED:**

1. The Report and Recommendation (Filing No. 39) is overruled;
2. The plea and the plea agreement are not accepted at this time; and

3. This case shall be removed from the sentencing schedule and returned to the trial calendar.

DATED this 1<sup>st</sup> day of March, 2007.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge